(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 577/2004

APPELLANTS IN JAIL	1.	Gautam Yadav, S/o Chatru Yadav, aged 27 years, occupation labourer.
	2.	Chatru Yadav S/o Alekh Rawat, aged about 52 years, occupation labourer.
	3.	Kumari Bai Yadav, W/o Chatru Yadav, aged 46 years, occupation Labourer. All resident of village Balouda, Police Station and Tehsil Saraipali, District Mahasamund (CG)
	Versus	
RESPONDENT		The State of Chhattisgarh, through the District Magistrate, Mahasamund (CG)

Present:

Mr. L.C. Das, counsel for the appellants.

Mr. Neeraj Mehta, Panel Lawyer for the State.

ORAL JUDGMENT

(22nd November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 11.5.2004 passed in S.T.No. 387/2003 whereby learned I Additional Sessions

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Judge, Mahasamund has convicted each of the appellants under Sections 304B of the IPC and sentenced them to undergo RI for 10 years.

2. Case of the prosecution, in brief, is that appellant Gautam was married with Surekha (since deceased) about one year three months prior to 10.6.2003 when Surekha died in her matrimonial home at about 11.00 a.m. due to burn injuries sustained by her. Allegation against the appellants are that they treated the deceased with cruelty and harassed her for dowry. This fact was narrated by the deceased to her parents Labo and Amriti whenever she visited them. However, they used to pacify her that with the passage of time everything will be alright. A social meeting was convened in this regard in her matrimonial house at Kalangapali in the presence of appellant Gautam and in the said meeting also the deceased complained about the ill-treatment meted out to her for dowry by the appellants and in the meeting appellant Gautam had promised that in future they shall not harass the deceased. In these circumstances, she was sent to her matrimonial home. However, she died on 10.6.2003. Merg intimation of the incident was given by her husband Gautam, appellant No. 1 vide Ex.P/6 and on the basis of merg inquiry First Information Report of Ex.P/7 was lodged by S.L. Tandon (PW-7), Head Constable on 23.6.2003. Inquest over the dead body was

XI-HC—76

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prepared vide Ex.P/5 and thereafter, the dead body was sent for postmortem examination to Govt. Hospital, Saraipali where Dr. R.S. Patel (PW-16) conducted postmortem and gave his report of Ex.P/16, in which he opined that cause of death was shock due to extensive burn, ante mortem in nature as she had sustained 100% burn injuries. The proceedings of the Panchayat held in village Kalangapali was taken into possession vide Ex.P/9-C. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Saraipali and the same was received on transfer for trial by the learned Additional Sessions Judge.

3. During trial 16 witnesses were examined by the prosecution. Thereafter, statements of the accused persons were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence and false implication in the above offence. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that from perusal of the evidence of parents of the deceased it would be evident that the deceased never complained about behaviuor of the appellants and both appellant Gautam and deceased Surekha lived cordially. PW-11 Kusho Sand, uncle of the deceased, has only alleged that on enquiry Surekha

22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

complained that her mother-in-law does not talk with her. Even Chitranjan Swai (PW-12) who is Sarpanch of the village Baloda has stated that the deceased never made any allegation against her husband or in-laws.

5. On the other hand, learned counsel appearing for the State/respondent supported the impugned judgment of the trial Court.

6. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

7. Conviction of the appellants is based on the statements of PW-5 Tara Bai, PW-10 Labo Sand, father of the deceased, PW-9 Amarti, mother of the deceased, PW-13 Samaru Sand, uncle of the deceased and PW-14 Prahlad Deep.

8. PW-5 Tara Bai, who is the resident of village Baloda and neighbour of the deceased has deposed before the Court that appellant Gautam used to beat Surekha for not brining dowry and for not cooking the food. This fact was narrated by deceased Surekha whenever she visited her. She has also deposed that a social meeting was convened in the village regarding ill-treatment of the accused persons and in the said meeting she had asked the members to persuade her husband,

23

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

mother-in-law and father-in-law. She has further stated that 10-15 days prior to her death, Surekha had told her that she shall be leaving her matrimonial home. However, she had persuaded her not to do so. In paragraph – 5 of her cross-examination she has admitted that the accused persons belonged to a poor family and therefore, domestic work was done by Surekha, whenever Surekha desired to visit her parental home, Gautam took her to her home. However, it is incorrect to say that Gautam accepted all the requests of Surekha and in fact he did not allow Surekha to live in her parental home for long and Gautam or his parents never complained about Surekha before her.

9. PW-9 Amarti, mother of the deceased and PW-10 Labo Sand, father of the deceased, have deposed in their examination-in-chief that their daughter after return from her matrimonial home complained that her husband demands T.V., Fan, goat etc. whereas her mother-in-law and father-in-law also complained that these articles were not given. However, on being questioned by the defence, they have admitted that Surekha never complained about behaviour of Gautam and both of them lived with harmony. They have admitted that at the time of marriage also the appellant did not make any demand. PW-10 Labo has further stated that a social meeting was convened in the village Kalangapali as the

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appellants did not come to take Surekha and in the said meeting appellant Gautam was also present and he had stated that he shall be taking Surekha with him.

10. PW-13 Samaru Sand, uncle of the deceased, has deposed that Surekha told him that her mother-in-law does not like the food prepared by her, her mother-in-law also used to complain that she has not been given watch, radio and cycle in dowry. A meeting was convened in his village and thereafter, she had gone to her in-laws' house. In the cross-examination, he has admitted the suggestion of the defence that except about demand of dowry the deceased made no complaint about behaviour of the appellants.

11. PW-14 Prahlad Deep, Secretary of Rawat Samaj, has stated that a social meeting was convened in village Kalangapali in which Gautam and two other persons of his village, father of the deceased Surekha and Surekhan herself were present and on enquiry Surekha had complained that her in-laws tease her for not bringing watch, cycle, radio etc. in dowry. However, she did not complain regarding any demand by her husband and Gautam had admitted in the meeting that his parents demand watch etc. The proceedings were reduced into writing vide Ex.P/ 9, Hindi transcript of the same is Ex.P/ 10, which bear his signature. After about 10-15 days of the said meeting he learnt about the death of Surekha.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

However, in his cross-examination he has admitted that the deceased never complained to him against the appellants regarding demand of dowry.

12. From close scrutiny of the statements of above witnesses, it is observed that there is unrebutted evidence of the witnesses that a meeting was convened in village Baloda as also in village Kalangapali on the complaints of the deceased that she was harassed and ill-treated in the name of demand of dowry by the appellant though parents of the deceased after initially alleging in their examination-in-chief that the deceased complained about cruelty by the appellants for dowry, in their cross-examination have deposed just opposite. However, independent witness Tarabai of village Baloda has deposed about cruelty for dowry by Gautam and his mother whereas uncle of the deceased Samaru and Prahlad have deposed that on the complaint of the deceased a meeting was convened in village Kalangapali and proceedings of the meeting were reduced into writing and in the said meeting the deceased had complained that her father-in-law and mother-in-law used to complain that she was not given watch, cycle, radio etc. in dowry and in that meeting appellant Gautam had admitted regarding demands of his parents of the above articles and promised that henceforth they shall not make any demand.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

13. It is not in dispute that marriage of Gautam and Surekha was solemnized only one year three months before her death and she died unnatural death because of the burn injuries sustained by her while she was residing in her matrimonial home. There is evidence that she was subjected to cruelty and harassment for dowry by the appellants. The defence has not been able to rebut the presumption of dowry death available under Section 113B of the Evidence Act and in these circumstances, conviction of the appellants under Section 304B of the IPC recorded by the trial Court is just and proper.

14. At this stage learned counsel for the appellants submits that the appellants who are father, mother and son and belong to the same family have been convicted and sentenced to undergo RI for 10 years, looking to the statements of parents of the deceased in their cross-examination, jail sentence imposed upon the appellants is too excessive and the same deserves to be suitably reduced.

15. Considering the above submission of learned counsel for the appellants and further considering the nature of allegations made by the witnesses against the appellants, there is no special reason for awarding more than minimum sentence prescribed under Section 304B of the IPC.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	16. In the result, the appeal is partly allowed. While maintaining conviction of the appellants under Section 304B of the IPC, jail sentence of 10 years' RI imposed by the trial Court is modified and the appellants are hereby sentenced to undergo RI for 7 years each. **Sd/-** **Dhirendra Mishra** **Judge**	

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.